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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	CC Docket No. 96-98

To: The Commission

REPLY COMMENTS

PUERTO RICO TELEPHONE COMPANY

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SUMMARY

The Puerto Rico Telephone Company reiterates that the Commission should provide broad guidance to the states rather than detailed regulations in implementing the interconnection mandates of the Telecommunications Act of 1996. Many commenters in this proceeding have recognized that Congress provided States with the flexibility to address local market factors within the parameters set forth in new Sections 251 and 252 of the Act. Explicit national rules actually may prolong implementation of competition as some state commissions discover that national standards are unworkable with respect to the specific conditions of their states.

This is especially true with respect to pricing standards. It is clear that if LECs are denied the capability to recover their costs pursuant to charges for interconnection and unbundled network elements, an unconstitutional taking may result. In addition, unless state commissions are permitted to exercise the role intended by Congress, national pricing standards based purely on total service long-run incremental cost ("TSLRIC") may be harmful to residential subscribers.

The Commission's plan to address reform of the access charge regime in a separate proceeding is widely supported.

Finally, the Commission should reject proposals by commenting parties that ignore the plain language of the statute. Centennial and TLD request excessive regulations with respect to section 251(f)(2) despite the fact that Congress has provided sufficient guidance for their implementation.

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REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules,[1] submits these Reply Comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM").[2]

I. INTRODUCTION

The comments submitted in this proceeding show that many parties question the respective roles of the FCC and the state commissions as tentatively assigned in the NPRM. In general, the Commission appears to prefer explicit and detailed national rules. However, this preference is contrary to the plain language of sections 251 and 252 and incorrectly assumes that national standards will be appropriate for state-by-state application. PRTC reiterates that states should be given

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1. 47 C.F.R. § 1.415.

2. In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-182 (rel. April 19, 1996).

appropriate discretion in overseeing local exchange competition, particularly in establishing pricing standards.

In addition, implementation of sections 251 and 252 does not include abandonment of the access charge regime.

Finally, states clearly have sole authority to implement section 251(f)(2). The Commission should reject efforts by commenting parties for states to apply standards with respect to this provision different from those standards specified by the 1996 Act.

II. ONLY GENERAL FEDERAL GUIDELINES WILL PERMIT STATES TO IMPLEMENT LOCAL COMPETITION AS INTENDED BY CONGRESS.

The Communications Act of 1934 explicitly divides jurisdiction over intrastate and interstate services between states and the Commission, respectively.[3] In general, heretofore the FCC and the states have regulated in separate exclusive spheres of jurisdiction. The 1996 Act altered this pattern with regard to one important area — the introduction of competition into the local exchange.[4]

Congress embarked upon the 1996 Act in an effort to provide federal guidelines for state commissions to implement local

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3. 47 U.S.C. § 152(b).

4. Id. See also 47 U.S.C. § 332(c).

competition in over fifty jurisdictions that were experiencing or anticipating competitive entry in varying stages. The guidelines are established and explained in section 251, and the state commission must provide for their implementation according to section 252. The framework provided by Congress differs greatly, however, from the transfer of jurisdiction over local competition to the FCC as contemplated by the NPRM.

Many commenting parties have expressed concern with respect to the preemptive approach of the NPRM. Parties representing a wide array of interests have raised objections to the Commission's proposed adoption of "explicit rules," which it contends would further a uniform, pro-competitive national policy framework."[5] These comments, consistent with PRTC's Initial Comments, demonstrate that detailed national rules are not contemplated by the Telecommunications Act of 1996[6] and that individual state characteristics require a more individualized approach to implementing competition.

A. Specific Standards Are Not Contemplated By the 1996 Act.

The 1996 Act assigned a significant role to state commissions for implementation of sections 251 and 252, which is

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5. NPRM at ¶ 27.

6. Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

consistent with state jurisdiction over intrastate communications. Congress has mandated that parties must negotiate voluntary interconnection agreements, and states must arbitrate open issues upon the request of one of the parties or if the parties fail to reach a negotiated outcome. However, the explicit national rules suggested by the Commission[7] and supported by various parties[8] infringe upon the voluntary negotiation process and upon the state role described by the statute and in accordance with section 2(b) of the Communications Act.

The 1996 Act expresses a clear preference for negotiated interconnection agreements. Negotiated agreements need not meet the requirements of sections 251(b) and (c), so long as they include a detailed schedule of itemized charges for interconnection and network elements, and receive approval from the state commission.[9] In addition, section 252(a) delays state arbitration of negotiation disputes until the 135th day after the

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7. NPRM at ¶ 27.

8. See, e.g., Association for Local Telecommunications Services ("ALTS") at 3; AT&T at 3-6; Hyperion Telecommunications, Inc. at 6; Jones Intercable, Inc. at 9; Nextel Communications, Inc. at 14; SDN Users Association, Inc. at 2.

9. § 252(a).

request for interconnection.[10] Congress, recognizing both the value and complexity of negotiating in a deregulated, newly competitive environment, requires the parties to negotiate for over four months before permitting the intervention by a state commission.

Explicit national rules will impair negotiation efforts in contravention of Congressional intent. Voluntarily negotiated agreements will yield terms that are mutually beneficial to both parties. However, all negotiating parties will be aware also of the duties imposed by sections 251(b) and (c), which provide sufficient notice of the conditions that will be imposed by a state commission should they fail to reach a voluntary agreement. Additional regulatory guidelines will not "facilitate the negotiation process, because both parties will have a clear idea of the terms and conditions that will govern them if they fail to reach an agreement." MFS Communications Company, Inc. at 5. Rather, adoption of explicit standards will "thwart the mandate of negotiated interconnection agreements" (BellSouth at 20) and "trump negotiation under the Act" (Greater Washington Urban League, Inc. at 1). See also North Carolina Public Staff Utilities Commission at 10 ("If the FCC . . . promulgates

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10. § 252(b).

detailed rules with respect to interconnection, [it] will . . . eviscerate those negotiations of any importance.").

Regulations that add to the duties imposed by sections 251(b) and (c) will indicate to parties requesting interconnection that negotiations should result in no less than the terms provided in the federal rules. Such regulations would likely impair voluntary negotiations between parties by encouraging requesting parties to demand terms that even the statute does not require. See National Association of Regulatory Utility Commissions at 7 ("The enactment of detailed Federal guidelines cuts against Congress's express choice for States[']monitored negotiation as the moving force for § 252 interconnection arrangements."). The effort to provide excessive regulatory guidance would overstep the Commission's mandate "to establish regulations to implement the requirements" of section 251 by impinging upon the interconnection procedure designated in section 252. Certainly, the Commission can implement section 251 without frustrating the negotiation process established in section 252.

Once parties reach the point in negotiations when they may request state arbitration (135th day to 160th day) Congress explicitly reserved to the states an unfettered role in hearing

and deciding open issues.[11] [12] Explicit national rules violate "the spirit and intent of the Act." Arizona Corporation Commission at 14; see also Alabama Public Service Commission at 4 (finding that preemptive rules "completely disregard[] the specific reservations of state authority in . . . the 1996 Act"); Bell Atlantic at 4 (finding that "prescribing national rules . . . would substantially overstep the bounds of the Commission's statutory authority"); National Bar Association at 2 (finding that "intrastate regulatory issues are best handled at the state level"); SBC Communications, Inc. at 19 (finding that "Congress intended only broad, flexible regulations"); Wyoming Public Service Commission at 3 (finding that the "extremely detailed sweep . . . in the NPRM is unnecessary and counterproductive to swift and rational implementation of the Act"). Prescriptive Federal regulations preempting the ability of states to oversee negotiation disputes are contrary to Congress's intent.

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11. §§ 252(b), (c), (d), (e).

12. Of course, it the state fails to act, the FCC shall then preempt state jurisdiction with respect to a particular matter or proceeding. § 252(e)(5).

B. A National Scheme Would Ignore Important State Individualities to the Detriment of Competition.

Commenting parties also highlight state circumstances that may require more regulatory flexibility than contemplated in the NPRM.[13] State commissions note that explicit national rules would not account for individual geographic, market, and population characteristics, thereby failing to provide sufficiently tailored conditions for competition. See Georgia Public Service Commission at 8 ("diversity of geography and demographics among states"); Maine Public Utilities Commission, et al. at 3 (state "variations in terrain, population density and even customer demand"); North Carolina Public Staff Utilities Commission at 10 (state's unique demographics, regulatory history, and "configuration of its entire telecommunications industry"); Oklahoma Corporation Commission at 3 (each state's regulatory body is best suited "to craft rules that address the particularities of that state"); Pennsylvania Public Utility Commission at 23 ("circumstances may vary between states making rigid federal requirements unacceptable").

Other commenting parties acknowledge that state commissions are best able to implement local competition pursuant to the specific considerations applicable in their state. For example,

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13. See, e.g., NPRM at ¶¶ 26-32.

the Citizens Utilities Company cites "each state's knowledge and first-hand experience in dealing with local conditions." Comments at 6. Similarly, the Michigan Exchange Carriers Association observes that "States and their commissions are more knowledgeable [than the FCC] about the specific market conditions of the local exchange territories." Comments at 16. See also GTE at 7 (stating that the networks at issue are local in nature, not national).

In establishing a significant role for states under section 251 and 252, Congress acknowledged that uniform standards for competition would not best implement local competition. PRTC urges the Commission to refrain from interpreting the statutory provisions in contravention of an expressed preference for state involvement that is evident from the plain words of the statute.

III. COMMENTERS AGREE THAT PRICING STANDARDS MUST BE PRUDENTLY IMPLEMENTED.

Pricing standards must be reserved to the state commissions as intended be Congress. See PRTC at 4-6; see also Alabama Public Service Commission at 22; Florida Public Service Commission at 10. Indeed, the Pacific Telesis Group predicts that "national uniform pricing policies could be devastating." Comments at 66. Any pricing standard, whether implemented at the federal or state level, will have significant implications for

the timing and quality of local exchange competition. Thus, PRTC reiterates that any standard must provide for the recovery of common costs and should permit sufficient flexibility for state implementation.

A. If TSLRIC Is Implemented, the Commission Must Provide for Recovery of Common Costs.

A number of parties support the implementation of total services long run incremental cost ("TSLRIC") as the pricing standard required by section 252(d)(1). See, e.g., ALTS at 36-37; Frontier at 21-22; LDDS Worldcom at 58. If this pricing standard is adopted, however, a provision must be made for the recovery of common costs.[14] Failure to do so could result in an unconstitutional taking under the 5th Amendment. Therefore, the FCC — and state commissions, if given the opportunity — must be cautious about mandating a pricing standard that does not fully recover common costs.

Potential local exchange competitors support TSLRIC to the exclusion of common costs, refusing to pay for the existing infrastructure that makes it possible for them to offer competitive services without the tremendous capital investment in

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14. The Commission has previously found that "it would not be reasonable to require LECs to base their connection charges only on the direct costs of these services, with no loadings or overhead costs." In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7429 n.291 (1992).

local exchange facilities. See, e.g., Jones Intercable, Inc. at 25; LDDS Worldcom at 60; SDN Users Association, Inc. at 2; Winstar Communications, Inc. at 29. Indeed, courts have long held that utility compensation must be compensatory. FPC v. Hope Natural Gas Co., 320 U.S. 591, 605 (1944) ("Rates which enable [a] company to operate successfully, to maintain financial integrity , to attract capital, and to compensate its investors for the risk assumed certainly cannot be condemned as invalid . . . .").

However, if rates are set at a level such that the regulated local exchange carriers are not compensated for their services, this action may result in an unconstitutional taking under the 5th and 14th Amendments. See, e.g., Duquesne Light Co. v. Barasch, 488 U.S. 299, 308 (1988) ("If the rate does not afford sufficient compensation, the State has taken the use of a utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments."). See also GTE at 65-71. LECs built their networks in reliance on a regulatory regime that permitted recovery of costs. If the Commission prevents cost recovery, such action may be confiscatory of LEC property.

The recovery of common costs is, in fact, consistent with the 1996 Act. Section 252(d)(2) requires that charges for interconnection and network elements be "based on the cost . . .

of providing the interconnection or network element" and permits a reasonable profit to be earned. It is essential that LECs be permitted to recover these costs within the confines of section 252(d)(2). See Ameritech at 62-72; Bell Atlantic at 35; BellSouth at 57; Cincinnati Bell at 24,30; Citizens Utilities Company at 16; Illinois Independent Telephone Association at 4; Massachusetts Attorney General at 4, 10; National Association of Development Organizations, et al. at 7; Public Utilities Commission of Ohio at iv; Sprint Corporation at 45.

Finally, the United States Telephone Association suggests that if ILECs are not compensated appropriately for their network investments, "LECs will rationally invest less than would be socially optimal." Comments at 41. See also Colorado Independent Telephone Association at 3. Contrary to comments by some parties that TSLRIC will recover appropriate costs,[15] many other parties reject the notion that LECs should recover common

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15. See AT&T at 62 (stating that if "properly defined," the "vast majority" of common costs are attributable under TSLRIC); LCI International Telecommunications Corp. at 3 (stating that TSLRIC will recover joint and common costs over the long run).

costs at all.[16] Therefore, the pricing standard must include explicitly a provision for the recovery of common costs.[17]

B. Any Federally Set Standard Should Permit State Flexibility.

PRTC reiterates that if the Commission proceeds to set national pricing standards, it must provide for state flexibility in implementing general standards.[18] This position is consistent with many commenting state commissions which agree that Congress reserved to states a greater role in setting pricing standards than is anticipated by the NPRM.[19] See Colorado Public Utilities Commission at 7; Florida Public Service Commission at 10;

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16. See, e.g., Consumer Federation of America and Consumers Union at 62-63; Jones Intercable, Inc. at 25; LDDS Worldcom at 60; SDN Users Association, Inc. at 2; Winstar Communications, Inc. at 29.

17. In addition, the adopted standard should not result in the shifting of costs to other services, especially if residential subscribers ultimately will bear the costs through rate increases. Local subscribers should not bear the brunt of the resulting irrational pricing scheme, specifically through an increase in local rates. See Ameritech at 60, 88; Rural Telephone Coalition at 27. Cf. U S WEST, INC. at 28 ("[T]he Commission cannot establish a rate for interconnection on the assumption that rates for other services will compensate LECs for the loss.").

18. In its Initial Comments (at 10), PRTC suggested that a range of prices may satisfy this goal. See NPRM at ¶ 125. PRTC reiterates that state authority is preferred to this option, as would be any national pricing scheme that affords maximum state flexibility.

19. See, e.g., NPRM at ¶¶ 117-121.

Illinois Commerce Commission at 41; Kentucky Public Service Commission at 4; Michigan Public Service Commission Staff at 13; Minnesota Public Service Commission at 8; New York State Department of Public Service at 24; Oregon Public Utility Commission at 30; Pennsylvania Public Utility Commission at 26. PRTC urges the Commission to refrain from usurping jurisdiction over pricing standards that has been reserved to the states.

IV. ACCESS CHARGES MUST NOT BE SET ASIDE PURSUANT TO THIS PROCEEDING.

Numerous commenting parties that have addressed the issue of access charges generally agree that section 251 does not permit interexchange carriers to avoid Part 69 access charges[20] and that reform of the access charge regime should be addressed in a separate proceeding.[21] Ameritech at 21; Bell Atlantic at 8; Citizens Utilities Company at 22; GTE at 76; Michigan Exchange Carriers Association at 41, 58; Minnesota Independent Coalition at 34-38; Minnesota Public Service Commission at 9; National Association of Development Organizations at 9; NYNEX Telephone Companies at 9-22; Pacific Telesis Group at 78; SBC Communications Inc. at 77; Sprint Corporation at 67. PRTC urges

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20. See NPRM at ¶ 164.

21. See id. at ¶ 3.

the Commission to conclude that "allowing interexchange carriers to circumvent Part 69 access charges by subscribing under section 251(c)(3) to network elements solely for the purpose of obtaining exchange access [is] inconsistent" with Congressional intent.[22] Access charge reform should be addressed wholly in a separate proceeding.

V. STATES HAVE SOLE AUTHORITY TO GRANT MODIFICATIONS AND SUSPENSIONS UNDER 251(f)(2).

Centennial Cellular Corp. ("Centennial") and Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD") urge this Commission to adopt rules that will "guide the State commissions in interpreting the criteria set forth in Section 251(f)(2)"[23] and "establish base-line rules" to ensure that a state's decision is based on local market conditions.[24] However, the proposals by both parties attempt to rewrite the statute to remove state discretion in implementing this section, and the Commission should reject them.

It is difficult to imagine any language clearer than that provided by Congress in section 251(f)(2).

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22. See NPRM at ¶ 164.

23. Centennial at 12.

24. TLD at 10.

> The State Commission shall grant such petition [for suspension or modification] to the extent that, and for such duration as, the State commission determines that such suspension or modification —
>
> (A) is necessary —
> (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
> (ii) to avoid imposing a requirement that is unduly economically burdensome; or
> (iii) to avoid imposing a requirement that is technologically infeasible; and
>
> (B) is consistent with the public interest, convenience, and necessity.[25]

So-called standards suggested by Centennial and TLD are merely attempts to craft a statutory provision that is different than the one adopted by Congress. PRTC agrees with the Commission and many other parties in this proceeding that "states alone have authority to make determinations under section 251(f)."[26] Alabama Public Service Commission at 33-34; ALLTEL at 6-7, 16; California Public Utilities Commission at 46; Cincinnati Bell at 41; Florida Public Service Commission at 38; GTE at 80; Illinois Commerce Commission at 84; Illinois Independent Telephone Association at 7; Lincoln Telephone and Telegraph Co. at 22; Minnesota Independent Coalition at 10-15. Contrary to Centennial's assertion that "State commissions have limited discretion to decide that a petitioning LEC has met" the

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25. § 251(f)(2) (emphasis added).

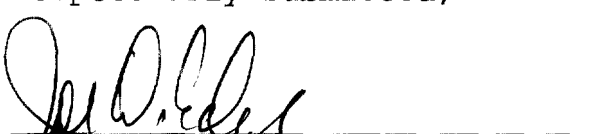
26. NPRM at ¶ 261.

251(f)(2) criteria,[27] state commissions have sole discretion — within the parameters of the direction provided by Congress — to decide LEC petitions for suspensions or modifications.

VI. CONCLUSION

For these reasons, PRTC again urges the Commission to implement broad interconnection guidelines, rather than detailed specifications, for implementation of state obligations. The Commission should reserve to states the implementation of pricing standards and section 251(f)(2), and defer reform of the access charge regime for a separate proceeding.

Respectfully submitted,



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27. Centennial Cellular Corp. at 17.

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CERTIFICATE OF SERVICE

I, Marjorie A. Schroeder, hereby certify that a copy of the foregoing was delivered by hand on May 30, 1996 to the following:

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